

(6) The work contract or a copy of the *Application for Temporary Employment Certification* as defined in 29 CFR 501.10 and specified in § 655.122(q).

(d) *Additional retention requirement for associations filing Application for Temporary Employment Certification.* In addition to the documents specified in paragraph (c) above, Associations must retain documentation substantiating their status as an employer or agent, as specified in § 655.131.

POST CERTIFICATION

§ 655.170 Extensions.

An employer may apply for extensions of the period of employment in the following circumstances.

(a) *Short-term extension.* Employers seeking extensions of 2 weeks or less of the certified *Application for Temporary Employment Certification* must apply directly to DHS for approval. If granted, the *Application for Temporary Employment Certification* will be deemed extended for such period as is approved by DHS.

(b) *Long-term extension.* Employers seeking extensions of more than 2 weeks may apply to the CO. Such requests must be related to weather conditions or other factors beyond the control of the employer (which may include unforeseen changes in market conditions). Such requests must be supported in writing, with documentation showing that the extension is needed and that the need could not have been reasonably foreseen by the employer. The CO will notify the employer of the decision in writing if time allows, or will otherwise notify the employer of the decision. The CO will not grant an extension where the total work contract period under that *Application for Temporary Employment Certification* and extensions would be 12 months or more, except in extraordinary circumstances. The employer may appeal a denial of a request for an extension by following the procedures in § 655.171.

(c) *Disclosure.* The employer must provide to the workers a copy of any approved extension in accordance with § 655.122(q), as soon as practicable.

§ 655.171 Appeals.

Where authorized in this subpart, employers may request an administrative review or de novo hearing before an ALJ of a decision by the CO. In such cases, the CO will send a copy of the OFLC administrative file to the Chief ALJ by means normally assuring next-day delivery. The Chief ALJ will immediately assign an ALJ (which may be a panel of such persons designated by the Chief ALJ from the Board of Alien Labor Certification Appeals (BALCA)).

(a) *Administrative review.* Where the employer has requested administrative review, within 5 business days after receipt of the ETA administrative file the ALJ will, on the basis of the written record and after due consideration of any written submissions (which may not include new evidence) from the parties involved or amici curiae, either affirm, reverse, or modify the CO's decision, or remand to the CO for further action. The decision of the ALJ must specify the reasons for the action taken and must be immediately provided to the employer, the CO, the OFLC Administrator and DHS by means normally assuring next-day delivery. The ALJ's decision is the final decision of the Secretary.

(b) *De novo hearing*—(1) *Conduct of hearing.* Where the employer has requested a de novo hearing the procedures in 29 CFR part 18 apply to such hearings, except that:

(i) The appeal will not be considered to be a complaint to which an answer is required;

(ii) The ALJ will ensure that the hearing is scheduled to take place within 5 business days after the ALJ's receipt of the OFLC administrative file, if the employer so requests, and will allow for the introduction of new evidence; and

(iii) The ALJ's decision must be rendered within 10 calendar days after the hearing.

(2) *Decision.* After a de novo hearing, the ALJ must affirm, reverse, or modify the CO's determination, or remand to the CO for further action. The decision of the ALJ must specify the reasons for the action taken and must be immediately provided to the employer, CO, OFLC Administrator and DHS by